

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:02cv301-MU-02
(C-CR-91-131-P)**

SHERRELL GARY BRINKLEY,)
)
 Petitioner,)
)
 v.)
)
 UNITED STATES OF AMERICA,)
)
 Respondent.)
 _____)

ORDER

THIS MATTER is before the Court on Petitioner's Motion for Summary Judgment, filed March 14, 2011. (Doc. No. 39).

The record of Petitioner's various proceedings show that he currently does not have any matter pending in this Court to which his Motion for Summary Judgment can be related. Rather, the only outstanding matter that Petitioner has before the Court is his Motion to Reopen his Habeas Corpus Petition Pursuant to Rule 60(b)(6) of the Federal Rules of Civil Procedure. (Doc. No. 36). In essence, Petitioner's Motion to Reopen asks the Court to reconsider its earlier determination that he must obtain pre-filing authorization from the Fourth Circuit Court of Appeals before filing a Motion to Vacate under 28 U.S.C. § 2255 in this Court. (Id.).

The record further shows that Respondent's response to Petitioner's Motion to Reopen is not due until April 6, 2001. Thus, the Court has not yet entered an order either granting Petitioner's Motion to Reopen or otherwise giving him permission to proceed with a Motion to Vacate. Inasmuch as Petitioner has improperly filed his Motion for Summary Judgment (Doc.

No. 39), that Motion is **DENIED without prejudice.**

SO ORDERED.

Signed: March 23, 2011

A handwritten signature in black ink, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen
United States District Judge

